

Private foundation; self-dealing; purchase of mortgage from disqualified person. The purchase by a private foundation of a mortgage from a bank, a disqualified person that in the normal course of its business acquires and sells mortgages, is not within the exception for general banking services and is an act of self-dealing under section 4941(d)(1)(A) of the Code.

Advice has been requested whether the transaction described below is an act of self-dealing under section 4941(d)(1)(A) of the Internal Revenue Code of 1954.

A private foundation purchased a mortgage from a banking institution that is a disqualified person with respect to the foundation. In the normal course of its business, the banking institution acquires and sells mortgages. The banking institution sold a mortgage bearing interest at seven percent to the foundation for its face value of \$6,000.

Section 4941(d)(1)(A) of the Code provides that the term 'self-dealing' includes the sale or exchange, or leasing, of property between a private foundation and a disqualified person.

Section 4941(d)(2)(E) of the Code provides that the payment of compensation by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purposes of the foundation shall not be an act of self-dealing if the compensation is not excessive.

Section 53.4941(d)-2(c)(4) of the Foundation Excise Tax Regulations provides that the performance of certain general banking services is an exception to the general rule prohibiting the lending of money between a private foundation and a disqualified person under section 4941(d)(1)(B) of the Code, and is within the scope of the personal services which do not constitute self-dealing transactions under section 4941(d)(2)(E).

The regulations further explain that the general banking services that are allowed are (1) checking accounts, as long as the bank does not charge interest on any withdrawals; (2) savings accounts, as long as the foundation may withdraw its funds on no more than 30-days notice without subjecting itself to a loss of interest on its money for the time during which the money was on deposit; and (3) safekeeping activities.

As the banking institution was the actual holder of the mortgage, it was not performing personal services as an agent for the foundation when it sold the mortgage to the foundation. Moreover, the sale of the mortgage is not a general banking function excluded from classification as an act of self-dealing under section 53.4941(d)-2(c)(4) of the regulations. Therefore, the exception for payment of compensation for personal services provided in section 4941(d)(2)(E) of the Code does not apply in this case.

Accordingly, the sale of the mortgage by the banking institution to the private foundation is an act of self-dealing under section 4941(d)(1)(A) of the Code.